HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

Writ Petition No.477 of 2007

Between

T.Srikrishna ..Petitioner

AND

State Bank of India, Market Street, Secunderabad and others ..Respondents

:: JUDGMENT ::

Counsel for the petitioner Sri V.V.N.Narayana Rao

Counsel for respondents

4.1.2007

Per G.S.Singhvi, C.J.

This is a petition for quashing order dated 2-1-2007, vide which the Recovery Officer, Debts Recovery Tribunal, Hyderabad (respondent No.2) dismissed the application filed by the petitioner under Rule 11 to Schedule II of the Income Tax Act, 1961 for release of Plot No.62 measuring 497 square yards forming part of Survey Nos.161 (part) and 185 situated at Yapral Village, Malkajgiri Mandal, Ranga Reddy District from attachment in R.P.No.246 of 2004.

Although the averments contained in the affidavit of the petitioner are vague and obscure and, on that account, the Court has been left to grope in dark about the true nature of the transaction involving mortgage of the plot in question by respondent No.7 Sri T.S.S.N. Ravi Prasad with State Bank of India, Market Street Branch, Secunderabad (respondent No.1) and the order passed by the Debts Recovery Tribunal in O.A.No.18 of 2004, but a careful scrutiny of the record reveals the following facts:

1) Respondent No.7, who purchased the plot in question through a registered sale deed dated 18-3-1991, created an equitable mortgage by depositing the sale deed with respondent No.1 for securing repayment of loan sanctioned to M/s.Excel Herbals (respondent No.3).

2) Due to the failure of respondent No.3 to repay the loan, respondent No.1 filed an application under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 (for short, 'the Act'), which was registered as O.A.No.18 of 2004.

3) The Debts Recovery Tribunal passed a decree in favour of

respondent No.1 and issued recovery certificate.

4) The execution proceedings initiated by respondent No.1 appears to have been registered as R.P. No.246 of 2004 and the mortgaged property was attached by respondent No.2.

5) Subsequently, respondent No.2 issued notice for auction of the mortgaged property. At that stage, the petitioner filed an application under Rule 11 of Schedule II of the Income Tax Act, 1961 for stay of the auction proposed to be held on 8-12-2006 and release of the mortgaged property by asserting that the plot mortgaged by respondent No.7 with respondent No.1 was a joint family property, which was purchased in his name through joint family funds.

6) Respondent No.1 contested the application filed by the petitioner by contending that the same was not maintainable. According to respondent No.1, the plot was purchased by respondent No.7 in his individual capacity and the petitioner does not have the locus to intervene in the recovery proceedings and the remedy, if any available to him was to sue respondent No.7.

Respondent No.2 dismissed the application of the petitioner by assigning the following reasons:

> "The sale deed bearing document No.1251 of 1991, dated 18-3-1991 is in the name of the 6th respondent. The record shows that the 6th respondent created equitable mortgage of the schedule property by depositing the above said sale deed pertaining to the schedule property with the 1st respondent Bank towards security to the loan sanctioned to the 2nd respondent. Since the 6th respondent is the exclusive owner of the property, he is entitled to mortgage

> the same to the Bank. On the other hand, the claimant also failed to prove that the property was purchased with joint family funds. The property was purchased 15 years back and the claimant now contends that it does not exclusively belong to the 6th respondent and they have got share in the property which is not tenable. The material placed before me shows that the claimant is a stranger to these proceedings. Moreover, this is not a suit for partition or declaration of title. The petitioner failed to establish that he is the rightful share holder of the property under attachment. There are no tenable grounds to allow this petition and in the result, the petition is dismissed."

Sri V.V.N.Narayana Rao, learned counsel for the petitioner made valiant effort to persuade us to set aside the impugned order and stay the auction schedule to be held today, but we have not felt persuaded to accept his prayer, because the petitioner has got an effective alternative remedy by way of appeal under Section 30 of the 1993 Act and there is no extraordinary reason for making a departure from the settled law that the High Court will not entertain writ petition under Article 226 of the Constitution of India if an effective alternative remedy is available to the petitioner. Leaned counsel could not show that the remedy of appeal available to the petitioner under Section 30 of the 1993 Act is not an effective alternative remedy. Therefore, we see no reason to entertain the writ petition by ignoring this aspect of the matter.

There is another reason for our disinclination to entertain the writ petition. Undisputedly, the property in question was mortgaged by respondent No.7 in favour of respondent No.1 in December, 1996. Therefore, after a gap of almost one decade, it is not open to the petitioner and other family members of respondent No.7 to obstruct the recovery proceedings initiated by respondent No.1 by creating a

façade of the plot being joint family property.

For the reasons stated above, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, WPMP.No.596 of 2007 filed by the petitioner for grant of interim relief is also dismissed.

G.S.SINGHVI, C.J.

4th January, 2007.

C.V.NAGARJUNA REDDY,J.

ARS